

MEMORANDUM

TO: Members of the House Oversight, Reform and Ethics Committee

FROM: Nick Ciaramitaro, Director of Legislation and Public Policy
Michigan AFSCME Council 25 and MSEA AFSCME Local 5

RE: Legislation pending before the Committee on January 24, 2012

DATE: January 23, 2012

Michigan AFSCME would like to make the following observations on the four bills pending before the Committee. Our comments are based on the bills as introduced. We reserve the right to comment on substitutes and amendments as they become available.

Mr. Chairman and Members of the Committee:

My name is Nick Ciaramitaro and I am Director of Legislation and Public Policy for the American Federation of State, County and Municipal Employees in Michigan. Together Michigan AFSCME Council 25 and MSEA AFSCME Local 5 represent approximately sixty thousand workers who provide public services to the people of the state of Michigan in state government, county government, local government, school districts, road commissions, hospitals and more. We represent the people who put into effect the policies established by this Legislature throughout our state.

We find the bills before you today unnecessary, counterproductive and concerning. I will comment on each individually.

House Bill 5023

As I read the bill it would make essentially two changes in law. (1) It would extend the penalties currently in law that apply to public school employees to all public employees. (2) It would extend the vicarious liability purported to apply to collective bargaining agents for illegal strike activity to work stoppage by even one member.

The vicarious liability of collective bargaining agents has already been held unconstitutional by Michigan Courts as a violation of due process. Provisions of current law allowing for injunctive relief without a showing of irreparable harm have also been struck down in the courts. Michigan's Constitution delegates authority over *procedural* matters involving court action to the State Supreme Court. The Legislature has control over *substantive* law. The method of invoking injunctive relief is procedural and as the provisions of the statute conflict with Michigan Court Rules the rules control. This remains true whether those provisions are applied to school employees only or, as under HB 5023, all public employees.

The penalties in law that remain in force would be extended to all public employees under the bill. We question the need for and the effectiveness of those penalties. The public sector strikes outside public schools have been virtually non-existent over the last several decades. Among school workers strikes

are also rare but, ironically, may have actually occurred more frequently. There is no reason to believe this act would be any more effective if extended than it has been there, but more importantly appears to be a solution in search of a problem. Public sector strikes are already illegal and extremely rare.

House Bill 5024

HB 5024 would clarify the provisions limiting mass picketing. Again, I am not aware of any problems that have not been adequately addressed under current law.

House Bill 5025

HB 5025 requires annual approval in order to withhold union dues from pay checks. It purports to apply to all employers, public and private, though it would undoubtedly invite litigation over federal preemption and First Amendment questions.

I hope the committee would consider the cost and lack of need for inviting such litigation.

First, withholding union dues from paychecks can only occur if two things happen: (1) the authorization is included in a collective bargaining agreement and (2) the employee has authorized the withholding (though it does not have to be reauthorized annually). Nearly all collective bargaining agreements are for a duration of three years and are subject to ratification by majority vote of the membership.

Second, current law requires that members be notified *annually* of their right to opt out of union membership and pay a fair share fee in lieu of dues.

Finally, I would note that the annual reauthorization requirement would be a cost for unions and employers alike. In light of the current economy we are looking at costs that are unnecessary. In short this bill appears to again be a solution in search of a problem.

House Bill 5026

HB 5026 would eliminate the statutory requirement for notification that workers are being solicited as strikebreakers. This provision of law has been in effect since 1962 – 50 years this year. The cost is minimal or non-existent, it has not been raised as a problem by employers in the past and it benefits both applicant and employer by letting people know the facts surrounding the employment. Again, this bill appears to be another solution in search of a problem.

The common theme here is that these bills simply are not needed and would place undue costs on employers and unions alike.